who were citizens by naturalisation and registration and according to the records kept in the Registration Department all the twenty persons were still citizens of Malaysia. The authors had the initial copyright in the musical works and they had lawfully assigned the copyright to E.M.I. (Malaysia) Sendirian Berhad under section 13 of the Copyright Act which states that copyright shall be transmissible by assignment, by testamentary disposition or by operation of law as movable property. After their assignment therefore the copyright in the musical works subsisted in favour of E.M.I. (Malaysia) Sendirian Berhad. As for the submission that the agreements were signed on behalf of the company by Mrs. Beh Suat Pheng when the articles of association of the company did not authorise her to do so I need only say that no such authorisation by the articles of association was necessary to empower her to sign the agreements on behalf of the company. Mrs. Beh Suat Pheng had been authorised by the managing director of the company to buy and sell copyright without restriction and she had also been delegated with some of the powers and duties of the managing director. As such she was perfectly entitled to sign the agreements on behalf of the company and her doing so could in no way render the agreements invalid. It was also contended that the original scrolls which the authors had composed should have been produced before it could be said that there had been any infringement. With respect I found no substance in this contention. The prosecution had produced the relevant records made by E.M.I. (Malaysia) Sendirian Berhad. It was not the musical scrolls but the musical works contained in those genuine records that were the original musical works the copyright of which had been infringed by the inferior quality pirate records. With regard to the evidence of Mrs. Beh Suat Pheng as to the infringement of copyright in the musical works the fact that she was an employee of the company was not a valid reason by itself for disregarding her evidence. She was an official of the company dealing particularly with copyright of Malay songs and as such she was in a good position to testify as to the genuineness or otherwise of her company's records. In the absence of any valid ground for discrediting her evidence the learned magistrate was quite right in accepting her evidence in respect of the infringement of the copyright.

The appeal was accordingly dismissed.

Appeal dismissed.

Solicitors: *Stanley Ponniah, Ng & Soo.*

ABU HASSAN BIN ALI v. LEE PENG KONG

[O.C.J. (Abdul Hamid J.) February 23, 1977]
[Kuala Lumpur — Civil Suit No. 2138 of 1975]

Damages — Personal injuries — Loss of sexual function — Partial amputation of the penis — Multiple abrasions — Element of overlapping.

The plaintiff claimed damages for injuries he received in a motor vehicle accident in 1975. The defendant admitted liability. The first medical report revealed the following injuries:—

(1) Multiple abrasions over the (R) cheek, forehead, chest, abdomen, both thighs, parietal region, (L) elbow, both knees.

(2) Laceration over scrotum and perineum. (R) testis completely avulsed. (L) testis exposed cut, (R) spermatic cord avulsed. (L) spermatic cord vessels partially severed but cord intact.

(3) Partial amputation of the penis.

In a subsequent medical report on the plaintiff in 1976 the physician said "before this accident, he is said to have had satisfactory sexual intercourse. After the accident, he says he has occasional nocturnal ejaculation. He also has painful erection. On examination general condition good; mental state satisfactory; abdomen scar tissue seen in the epigastrium as well as the hypogastrium.... Further scar tissue also seen on the left inguinal region and the right side in the anterior aspect. *Examination of genitalia:* The pubic hair distribution is seen to be normal. The size of the penis is average. The right scrotum is missing,... (there are) scars left by removal of the right scrotum and testis.... However the testis is atrophic and measures about 2 cm by 1 cm. (There is) a scar on the torso aspect of the penis and the trunk of the penis. This scar measures 2 cm by ½ cm and is indicated by a yellow indicator. It is slightly tender. The patient was sent for semen analysis. Unfortunately, he was unable to produce a specimen at this occasion...." He then concluded as follows:—

"(1) It is very unlikely that this patient is able to father a child because the remaining testis is atrophied probably due to a result of damage to the blood supply to the testis.

(2) Technically, this patient should be able to have sexual intercourse. However one has to take into account the psychological and emotional aspect of this question and I am unable to draw any firm conclusion apart from saying that there should be no technical difficulty in having sexual intercourse.

(3) The penis is intact. There was a partial amputation during the accident but this has been effectively resatured.

It is noted that this examination and medical report does not include a psychiatric assessment nor does it include an orthopaedic assessment."

There was further supplementary medical report in 1977. After careful examination of the medical reports,

Held: (1) the court should have regard to the following: (a) the multiple abrasions and lacerations in various parts of the body; (b) the partial amputation of the penis; (c) the fact that the plaintiff is now sterile and therefore unable to father a child; (d) the likelihood that the enjoyment of the plaintiff's sexual intercourse will be affected by psychological and emotional effect; (e) the pain in the penile scar during sexual intercourse; (f) the ugly scars on various parts of the body and (g) the occasional pain in the penile scar when not performing sexual act, backache and itchiness of the scar on the abdomen. In its final assessment the court should however bear in mind the element of overlapping;

(2) in a case such as this it is impossible to accurately assess the extent of pain and suffering and for that matter to express with certainty that the injuries received by a claimant in one case can precisely be compared with the injuries received in another;

(3) taking into account the overall picture judged in the light of *Chua Kim Liang's* case,[3] a sum of $27,500 would provide a fair and reasonable compensation.

Cases referred to:-

(1) *Esah binte Pa'at & Anor.* v. *Changi Bus Co. Ltd.* [1964] M.L.J. lx.

(2) *Tan Guan Cheng & Anor.* v. *Kuala Lumpur, Klang & Port Swettenham Omnibus Co. Ltd.* [1971] 1 M.L.J. 49.

(3) *Chua Kim Liang & Anor.* v. *Teo Kim Ngo* [1963] M.L.J. 262.

CIVIL SUIT.

M. Segaram for the plaintiff.

Khoo Eng Chin for the defendant.

Abdul Hamid J.: The plaintiff claimed damages for injuries received in a motor vehicle accident on September 6, 1975. The defendant admitted liability and the court is to assess the quantum of damages.

The first medical report dated December 3, 1975 reveals the following injuries —

(1) Multiple abrasions over the (R) cheek, forehead, chest, abdomen, both thighs, parietal region, (L) elbow, both knees.

(2) Laceration over scrotum and perineum. (R) testis completely avulsed. (L) testis exposed cut, (R) spermatic cord avulsed. (L) spermatic cord vessels partially severed but cord intact.

(3) Partial amputation of the penis.

Subsequently a medical report was given by Dr. K.B. Kuah who examined the plaintiff on April 19, 1976 where he stated by way of introduction that "before this accident, he is said to have had satisfactory sexual intercourse. After the accident, he says he has occasional nocturnal ejaculation. He also has painful erection."

Dr. Kuah further said that "on examination general condition good; mental state satisfactory; abdomen scar tissue seen in the epigastrium as well as the hypogastrium as shown in photograph number 1. Further scar tissue also seen on the left inguinal region and the right side in the anterior aspect. *Examination of genitalia:* The pubic hair distribution is seen to be normal. The size of the penis is average. The right scrotum is missing, the general appearance of this is shown in photograph number 2. Photograph number 3 shows the scars left by removal of the right scrotum and testis. Photograph number 4 shows the remaining left scrotum. However the testis is atrophic and measures about 2 cm by 1 cm. Photograph number 5 shows a scar on the torso aspect of the penis at the junction between the glans penis and the trunk of the penis. This scar measures 2 cm by ½ cm and is indicated by a yellow indicator. It is slightly tender. The patient was sent for semen analysis. Unfortunately, he was unable to produce a specimen at this occasion. It is noted that by the patient's own story he does get nocturnal ejaculations. However semen analysis is absolutely essential. A negative count would have given an absolute answer but the clinical findings are sufficiently significant to draw a conclusion on the question of whether this patient, Encik Abu Hassan is able to father a child."

He then proceeded to give the following conclusions —

"(1) It is very unlikely that this patient is able to father a child because the remaining testis is atrophied probably due to a result of damage to the blood supply to the testis.

(2) Technically, this patient should be able to have sexual intercourse. However one has to take into account the psychological and emotional aspect of this question and I am unable to draw any firm conclusion apart from saying that there should be no technical difficulty in having sexual intercourse.

(3) The penis is intact. There was a partial amputation during the accident but this has been effectively resatured.

It is noted that this examination and medical report does not include a psychiatric assessment nor does it include an orthopaedic assessment."

From the photographs in the Agreed Bundle of Documents (AB) ugly scars on the chest in the regions described by Dr. Kuah can be seen.

A further supplementary medical report dated January 18, 1977 was given by Dr. Kuah. It is revealed that the plaintiff has been married for five months now. The plaintiff has told Dr. Kuah that he has sexual intercourse once or twice a month and although he is able to attain an erection, he feels that this erection is not always maintained. Occasionally as soon as he achieves penetration the penis softens and he is unable to continue with the sexual act. On other occasions he is able to perform the sexual act with ejaculation. However, he feels that the ejaculation is of small volume. He maintains that he has enjoyment on every occasion he is able to perform the sexual act but this enjoyment is different from those he experienced prior to the accident. Furthermore, he experiences pain in the penile scar during sexual intercourse.

It is also revealed that apart from the problem he has complained, there is the occasional pain in the penile scar when not performing the sexual act, backache and itchiness of the scar on the abdomen.

Dr. Kuah concluded as follows —

"(1) The conclusions I have drawn in my previous report dated April 19, 1976 still stand with regard to this patient.

(2) The claim that he has sexual intercourse once or twice a month is rather unusual for a young man married only 5 months. However the wife's statement on this should be noted.

(3) The softening of the erected penis before the completion of the sexual act may be due to a psychological effect. The phenomenon of not being able to maintain an erection is rarely seen in a man who has not had a motor accident.

(4) The problem of the sexual enjoyment being different from those he had before the motor accident is difficult to assess. One has to bear in mind that this is a different sexual partner. Furthermore the degree of enjoyment is totally dependent on the patient's interpretation.

(5) The question of pain in the penile scar during and apart from the sexual intercourse is probably due to the scar being stretched during an erection."

After careful examination of the medical reports I feel that the court shall have to have regard to the following — (a) the multiple abrasions and lacerations in various parts of the body; (b) the partial amputation of the penis; (c) the fact that the plaintiff is now sterile and therefore unable to father a child;

(d) the likelihood that the enjoyment of the plaintiff's sexual intercourse will be affected by psychological and emotional effect; (e) the pain in the penile scar during sexual intercourse; (f) the ugly scars on various parts of the body and (g) the occasional pain in the penile scar when not performing sexual act, backache and itchiness of the scar on the abdomen. In its final assessment the court shall however bear in mind the element of overlapping. Three cases have been cited for the court to consider and they are as follows — (1) *Esah binte Pa'at & Anor.* v. *Changi Bus Co. Ltd.*;[1] *Tan Guan Cheng & Anor.* v. *Kuala Lumpur, Klang & Port Swettenham Omnibus Co. Ltd.*[2] and *Chua Kim Liang & Anor* v. *Teo Kim Ngo.*[3]

Esah's case seems relevant only in so far as the multiple injuries received by the plaintiff.

Tan Guan Cheng's case was decided by me. In that case a schoolboy aged 8 had pelvis fracture and ruptured urethra and there was likelihood that he would be impotent and sterile. I awarded $20,000 as general damages. It may be distinguished from the present case in that here the plaintiff is, according to the medical report, sterile and will not be able to father a child.

In the case of *Chua Kim Liang* a sum of $25,000 was awarded. In that case it is shown that the plaintiff suffered some derangement of his sexual functions — namely, attempts to perform sexual act causes the plaintiff pain and produces psychological consequences. To my mind the decision in that case seems pertinent in particular in regard to the psychological and emotional effect upon the plaintiff's enjoyment of his sexual act.

In my view the injuries received by the plaintiff, the consequential effect of these injuries upon the plaintiff and also the extensive ugly scars found on the body of the plaintiff are slightly more severe than those sustained by the plaintiff in *Chua Kim Liang's* case. Nonetheless I feel that in a case such as this it is impossible to accurately assess the fullest extent of pain and suffering and for that matter to express with certainty that the injuries received by a claimant in one case can precisely be compared with the injuries received in another case.

In the final analysis it is my considered judgment that taking into account the overall picture judged in the light of the *Chua Kim Liang's* case, a sum of $27,500 would provide a fair and reasonable compensation. I would therefore enter judgment for the plaintiff in the sum of $27,500, interest at 6% per annum with effect from the date of service of the writ and costs.

Judgment for the plaintiff.

Solicitors: *Segaram & Co.; Khoo & Sidhu.*

PUBLIC PROSECUTOR v. TUNKU MAHMOOD ISKANDAR

[O.Cr.J. (Abdul Hamid J.) April 17, 1977]
[Johore Bahru — Criminal Trial No. 13 of 1977]

Criminal Law and Procedure — Culpable Homicide not amounting to murder — Plea of guilty — Sentence — Equality under the Constitution — Rule of Law — Penal Code, s. 304.

In this case the accused, a member of the Johore Royal family, was charged with an offence under section 304 of the Penal Code. He pleaded guilty.

Held: (1) in considering the appropriate sentence the court must consider the facts surrounding the particular incident and take into account the conduct of both the accused and the deceased;

(2) after full consideration of the facts and surrounding circumstances and relevant mitigating circumstances, the sentence that shall be imposed is imprisonment for six months and a fine of $6,000 or in default six months' imprisonment.

CRIMINAL TRAIL.

Abu Talib Othman (Senior Federal Counsel) for the Public Prosecutor.

Datuk P. Suppiah for the defendant.

Abdul Hamid J. (delivering oral judgment): The accused is charged with the commission of an offence under section 304 of the Penal Code. Upon this charge he has pleaded guilty and he fully understands the nature and consequences of his plea. The facts in so far as they relate to the commission of this offence have been produced before the court and the accused fully admits them without qualification. I accept his plea of guilty and accordingly I convict him to the offence charged. It now remains for this court to sentence the accused.

I have heard the plea in mitigation made by Datuk P. Suppiah on behalf of the accused. He submitted at length and all mitigating factors have been put forward before this court.

I also have before me the facts given by the prosecution and all relevant facts have been submitted including all the circumstances surrounding the incident.

While it is clearly established that the death of Teo Ah Bah was caused by the accused, it is also revealed that there was evidence to show that at the material time commission of a criminal act by the deceased was in progress. It is also revealed that there were charges under the Customs Act pending against the deceased. The nature of these charges appears to relate to the deceased's purported criminal activity.

This observation is not to be construed as an assumption of guilt of the deceased and neither must it be deemed to be a judicial pronouncement upon the charges previously instituted against the deceased for to do so would be to condemn a man guilty before he is tried. And by the same token it certainly is not the intention of the court to acknowledge that the accused was fully justified in doing what he did. I would surmise that these factors have been disclosed to enable the court to fully appreciate the relevant circumstances leading to and surrounding the incident upon which the defence counsel has urged me to consider them in determining the sentence the court